WPMS No. 1549 of 2006
Hon'ble P.C. Verma, J.

Sri P.C. Bisht, learned Counsel for the petitioner, Sri H.M. Raturi, learned Standing Counsel for the respondent no. 1 & 4 and Sri Rajesh Joshi, learned Counsel for the respondent no. 2.

This writ petition has been filed challenging the judgment and order dated 21.7.2006 passed by the Additional Chief Revenue Commissioner (Circuit Court), Nainital, passed under Section 331(4) of the UP Zamindari Abolition & Land Reforms Act.

It is settled law that only the second appeal can be filed under Section 100 CPC as this provision has been adopted by reference of Section 331(2) of UPZA&LR Act. Respondent no. 2 has set up an entirely new case based on the WILL after the decision in the first appeal by compromise. Additional Chief Revenue Commissioner ought to have not entertained the second appeal and ought to have rejected it relegating the appellant in second appeal to get his title declared based on WILL under order.

Section 100 CPC clearly provides that second appeal shall lie from an appeal, decree or judgment on the substantial question of law, which clearly indicates that only parties in appeal can prefer an appeal and not a third party who may be an aggrieved party.

Therefore, order of the Additional Chief Revenue Commissioner is set aside. Respondents no. 2, if he so desires, may get the WILL declared under Section 229(b) of the UPZA & LR Act.

Writ petition is disposed of accordingly.

(P.C.V., J.)

27.6.2008
Prabodh